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Message Text

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47
ACTION EB-07

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SP-02 AGR-10 FMC-02 /082 W
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FM AMEMBASSY BRASILIA
TO SECSTATE WASHDC 6854
INFO AMCONSUL RIO DE JANEIRO

UNCLAS SECTION 1 OF 2 BRASILIA 9334

E.O. 11652: N/A
TAGS: EINV, EFIS, BR
SUBJECT: FOREIGN INVESTMENT IN FISHING

REF: STATE 265945

1. FOLLOWING IS A SUMMARY OF PROVISIONS CONTAINED IN BRAZILIAN FISHING REGULATIONS, DECREE 68.459 OF APRIL 1, 1971 THAT RELATE TO FOREIGN FISHING OPERATIONS WITHIN THE TERRITORIAL WATER CLAIMED BY BRAZIL:

ART 1. ESTABLISHES FOLLOWING FISHING AREAS:
ZONE I - 100 NAUTICAL MILES OFFSHORE.
ZONE II - FROM 100 TO 200 NAUTICAL MILES OFFSHORE.

PARA 1. FISHING ACTIVITIES IN ZONE I RESERVED FOR NATIONAL VESSELS.
PARA 2 NATIONAL AND FOREIGN FISHING VESSLES MAY OPERATE IN ZONE II.
PARA 3 FISHING OF CRUSTACEOUS AND OTHER LIVING SPECIES WHICH ARE DEPENDENT UPON THE BOTTOM OF THE SEA IS RESTRICTED TO NATIONAL FISHING VESSLS.
PARA. 4 FOR THE PURPOSE OF THIS DECREE, FOREIGN
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VESSELS LEASED BY BRAZILIAN COMPANIES ARE

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

CONSIDERED THE SAME AS NATIONAL VESSELS.
PARA. 5 UNDER SPECIAL CIRCUMSTANCES, THE AGRICULTURE MINISTRY MAY ALLOW FOREIGN VESSELS TO FISH IN AREAS INCLUDED IN ZONE I, THOUGH SUBJECT TO PAYMENT OF FEES.

ART. 3 NATIONAL FISHING VESSELS OR FOREIGN LEASED FISHING VESSELS SHOULD:
I - POSSESS OWNERSHIP REGISTRATION ISSUED BY THE BRAZILIAN MARITIME COURT, IF THEY ARE NATIONAL AND LARGER THAN 20 GROSS TONS.

II - BE REGISTERED WITH SUDEPE (GOB FISHING DEVELOPMENT SUPERINTENDENCY), IF THEY ARE BIGGER THAN 2 GROSS TONS.

III - BE REGISTERED WITH THE RESPECTIVE POST AUTHORITY.

ART. 4 LEASE AUTHORIZATION FOR FOREIGN VESSELS OR THE EXTENSION OF A LEASE WILL BE GRANTED BY AGRICULTURE MINISTRY, WITH NAVY MINISTRY'S ADVICE AND AFTER INTERESTED PARTY PROVES TO SUDEPE THAT:

I - STOCK CONTROL OF FISHING COMPANY WHICH IS RENTING VESSELS IS IN THE HANDS OF NATIVE BRAZILIANS.
II - CREW IS MADE UP OF AS MANY BRAZILIAN AS NATIONAL LABOR LEGISLATION REQUIRES (EMBASSY NOTE: THIS MEANS AT LEAST TWO-THIRDS).

PARA. 1 LEASE WILL ONLY BE AUTHORIZED IF OPERATION OF VESSELS WILL INCREASE EXPORTS OR SUPPLY.
UNDER NO CIRCUMSTANCES WILL LEASE ALLOW A PRIVILEGED SITUATION TO FOREIGN VESSELS.
LEASE WILL INITIALLY BE GRANTED FOR A PERIOD UP TO ONE YEAR AND MAY BE EXTENDED FOR TWO ADDITIONAL ONE-YEAR PERIODS.
PARA 3. WHEN LEASE EXPIRES, IF NO EXTENSION IS PROVIDED, VESSEL WILL ONLY BE ALLOWED TO CONTINUE OPERATING IF IT IS NATIONALIZED (I.E., OBTAINS BRAZILIAN REGISTRY).
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PAGE 03 BRASIL 09334 01 OF 02 131414Z

PARA 4. VESSELS MORE THAN FIVE YEARS OLD ARE NOT ELIGIBLE FOR NATIONALIZATION.

ART. 5 FOREIGN FISHING VESSELS NOT INCLUDED IN LEASE CONTRACTS WITH BRAZILIAN COMPANIES WILL BE ALLOWED TO FISH IN ZONE II OF THE BRAZILIAN TERRITORIAL SEA, UNDER AGRICULTURE MINISTER'S AUTHORIZATION AND NAVY MINISTRY'S ADVICE. APPROVALS ARE FOR A ONE-YEAR PERIOD

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

AND CAN BE RENEWED. INDIVIDUAL AUTHORIZATIONS SPECIFY
PROCEDURES AND EQUIPMENT WHICH CAN BE USED. PAYMENT
OF REGISTRATION AND OPERATIONAL FEES IS REQUIRED.

ART. 6 REQUESTS FOR AUTHORIZATION SHOULD BE ADDRESSED TO
THE MINISTRY OF AGRICULTURE THROUGH SUDEPE BY A
BRAZILIAN COMPANY WHICH CAN LEGALLY AND FINANCIALLY
BE RESPONSIBLE FOR THE ACTIVITES OF FOREIGN VESSELS.
THE PETITION SHOULD INCLUDE:

I- NAME AND NATIONALITY OF FOREIGN PERSONS OR
COMPANY MAKING REQUEST.

II- TECHNICAL INFORMATION ON VESSELS, INCLUDING EQUIP-
MENT TO BE EMPLOYED, PICTURES, COPIES OF ORIGINAL
REGISTRATION DOCUMENTS, CREW NAMES AND FUNCTIONS
AND PROOF THAT THE VESSELS HAVE ALL UPDATED
CERTIFICATES UNDER INTERNATIONAL AGREEMENTS TO
WHICH BRAZIL IS A PARTY.

III- INTENDED FISHING ROUTE AND INDICATION OF PLANS,
PURPOSES OF FISHING ACTIVITIES AND METHODS AND
TECHNIQUES TO BE USED.

IV - AGREEMENT TO RESERVE SPACE ON BOARD TO PERMIT
SUDEPE OR NAVY MINISTRY OFFICIALS TO FOLLOW THE
FISHING ACTIVITIES.

ART. 7 FOREIGN VESSELS GRANTED AUTHORIZATION REQUEST UNDER
ARTICLE 6 ARE REQUIRED:

I - TO PAY IN NATIONAL CURRENCY A REGISTRATION FEE
EQUIVALENT TO US$500.
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PAGE 04 BRASIL 09334 01 OF 02 131414Z

II - TO PAY IN NATIONAL CURRENCY AN OPERATING FEE
EQUIVALENT TO US$20 PER REGISTERED NET TON.

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PAGE 01 BRASIL 09334 02 OF 02 131406Z

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

47
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UNCLAS SECTION 2 OF 2 BRASILIA 9334

ART. 8 CAPTAINS OF FOREIGN VESSELS THAT MAY ENTER BRAZILIAN
TERRITORIAL WATERS UNDER THE CONDITIONS STATED IN
ARTICLES 4, 5 AND PARA. 5 OF ARTICLE 1 SHOULD:

I- USE "BOARD MAPS" EMPLOYED BY SUDEPE AND FORWARD
THEM SOON AS THEY ARE PROPELY FILLED OUT TO
SUDEPE, WHEN THEY ARE DUE;

II - BE AWARE AND COMPLY WITH BRAZILIAN LAWS AND REGULA-
TIONS, PARTICULARLY THOSE PERTAINING TO FISHING AND
TO MARINE POLLUTION PREVENTION;

III - ONLY EMPLOY PROCEDURES AND EQUIPMENT APPROVED BY
SUDEPE;

IV - INFORM THE NAVY MINISTRY AND RELATED ORGANIZATIONS
AS TO DATE AND HOUR OF ARRIVAL IN AND DEPARTURE FROM
BRAZILIAN TERRITOAIL WATERS, AS WELL AS THE DAILY
POSITION OF THE VESSELS IN SUCH WATERS, FOR PURPOSES
OF MARITIME TRAFFIC CONTROL.

ART. 9 FOREIGN FISHING VESSELS WITHOUT LEASE CONTRACTS
CAN ONLY UNLOAD FISH IN NATIONAL PORTS UNDER SPECIAL
UNCLASSIFIED

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PAGE 02 BRASIL 09334 02 OF 02 131406Z

SITUATIONS AND UPON SUDEPE'S AUTHORIZATION.

ART. 10 THE TRANSFER OF FISH TO OTHER VESSELS IN THE TERRITORIAL
SEA IS SUBJECT TO PREVIOUS AUTHORIZATION AND SHOULD BE
CARRIED ON ACCORDING TO STIPULATED CONDITIONS.
SUCH AUTHORIZATIONS WILL BE GRANTED BY THE AGRICULTURE

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

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MINISTRY, UPON NAVY MINISTRY'S OPINION.

ART. 11 - PARA 5 - ALL FOREIGN FISHING VESSELS WHICH FISH LIVE SPECIES IN THE TERRITORIAL SEA WITHOUT GOVERNMENTAL AUTHORIZATION OR NOT COMPLYING WITH RESTRICTIONS STATED IN SUCH AUTHORIZATIONS, WILL VIOLATE ARTICLES 4 AND 5 OF THIS DECREE. SUCH VIOLATION CONSTITUTES THE CRIME OF SMUGGLING AND THE BRAZILIAN GOVERNMENT CAN SEIZE THE VESSEL, EQUIPMENT AND CARGO, AND CHARGE THE CAPTAIN UNDER PREVAILING PENAL LEGISLATION.

ART. 16 SUDEPE WILL PERIODICALLY ESTABLISH THE MAXIMUM TONNAGE BY SPECIES AND BY FISHING AREAS THAT CAN BE CAUGHT BY NATIONAL OR FOREIGN VESSELS.

2. BRAZILIAN LAW ESTABLISHING 200 MILE TERRITORIAL SEA, DECREE LAW 1098 OF MARCH 25, 1970, SPECIFIES THAT FISHING VESSELS OF FOREIGN REGISTRY MAY OPERATE IN BRAZILIAN WATERS UNDER TERMS OF INTER-GOVERNMENTAL AGREEMENTS.

3 GOB ENCOURAGES FOREIGN INVESTMENT IN NATIONAL FISHING INDUSTRY. PREFERENCE IS FOR JOINT VENTURES BUT WHOLLY FOREIGN-OWNED ENTERPRISES CAN BE PERMITTED.
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Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

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EO Systematic Review
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